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New-York Historical Society.

MR. BANCROFT'S LETTER

ON THE

EXCHANGE OF PRISONERS

DURING THE

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MR. BANCROFT'S LETTER ON THE EXCHANGE OF PRISONERS DURING THE AMERICAN WAR OF INDEPENDENCE.

New-York, Feb. 14, 1862.

My dear Mr. Bradish:

The interest that attaches to the question of the exchange of prisoners between our loyal armies and the infatuated men still engaged in hopeless rebellion, has led me to look up the principles adopted by Great Britain in our war of independence. Not that there is any analogy between our war for independence, which was forced upon us by a wrongful policy, and the transient insurrection effected by a few desperate men in the States which knew the general government only by its benefits; but George the Third was devoted to the maintenance of the regal authority with the intensest bigotry, and by his narrow mind our ancestors were reputed guilty of treason in its worst form. The precedents which he established may therefore be received as no derogation from his claim to sovereignty, and where they incline to mercy, they may be invoked as worthy of our consideration. To that end, leaving aside the vast number of papers on incidental questions, I ask to bring before the New-York Historical Society the few documents which show precisely the rule that was adopted, and to trace it from its source.

On the 13th of August, 1775, Gage, in a letter to Washington, refused to accord to the Americans whom he had taken, the rights of prisoners of war, saying, with the insolence which he thought would be acceptable at court :

GENERAL GAGE TO GENERAL WASHINGTON.

"*August* 13, 1775.

"Britons, ever preëminent in mercy, have outgone common examples and overlooked the criminal in the captive. Upon these principles your prisoners, whose lives by the law of the land are destined to the cord, have hitherto been treated with care and kindness, and more comfortably lodged than the king's troops in the hospitals ; indiscriminately, it is true, for I acknowledge no rank that is not derived from the king."

But Great Britain was unable to carry on the war with troops levied from her own sons. The ministry entered upon measures for obtaining recruits and mercenaries from Germany ; and Sir Joseph Yorke, minister at the Hague, was asked to give his advice on the subject. In his reply, he represented the necessity of adopting a system of exchanges :—

SIR JOSEPH YORKE TO SECRETARY WEYMOUTH.

"*From the Hague, September* 5, 1775.

" First, as to the procuring Recruits ftom Germany, I really think that if it is not inconvenient to His Majesty to afford us the necessary assistance in his Electoral Dominions, we may be furnished with recruits to any number, and at a tolerable easy rate. I have been lately engaged in much discussion and enquiry about the practicability of such a plan, at the request of Lord Barrington, and in concert with Gen. Keppel, to whom His Lordship likewise applied, and as he is now upon his return to England, he will be able and willing to give your Lordship all the information possible upon this subject, for he understands it thoroughly.

" Secondly, as to the military force which princes upon the continent may be engaged to supply in the course of the present contest between Great Britain and her colonies ; that is a point of a much more difficult and extensive discussion. I am to take it for granted that such troops so demanded, would be only meant to serve in Europe ; for I must beg leave to mention an anecdote, relative to the Hessian Troops in Scot-

land, in 1745, which was very embarrassing. I mean the difficulty made by them to combat our only enemy, the rebels, for want of a cartel for the exchange of prisoners, a point impossible for us to grant, because we could not treat upon it with rebels, which made the late Duke of Cumberland (whilst the few who knew it were enjoined secrecy) get rid of them as fast as he could, and never attempt to bring them to action. I am afraid, was it ever intended to send such troops to America, we should not find them more pliable there than in Europe, and their fears would still be greater, as the objects and the ideas they would give rise to would be all new."

Meantime, the successes of Montgomery in Canada had secured many prisoners of distinction. Congress was anxious for the liberation of Col. Ethan Allen, who had been maltreated, and came, among others, to the following resolutions :—

"*December* 2, 1775.

"*Resolved*, That an exchange of prisoners will be proper, citizens for citizens, officers for officers of equal rank, and soldier for soldier.

"The Congress being informed that Mr. Ethan Allen, who was taken prisoner near Montreal, is confined in irons on board a vessel in the river St. Lawrence :

"*Resolved*, That General Washington be directed to apply to General Howe on this matter, and desire that he may be exchanged."

In obedience to these resolutions, Washington, on the 18th of December, 1775, wrote to Howe, complaining that Colonel Ethan Allen had been thrown into irons and treated like a felon, and threatening retaliation. To this letter he added the following postscript :—

POSTSCRIPT OF A LETTER FROM GENERAL WASHINGTON TO GENERAL HOWE.

"*December* 18, 1775.

"If an exchange of prisoners taken on each side in this unnatural contest is agreeable to General Howe, he will please to signify as much to his most obedient, &c."

To this insinuation, Howe at that time returned no answer. On the following day he wrote to Lord George Germain, as follows :—

GENERAL HOWE TO LORD GEORGE GERMAIN.

"*December* 19, 1775.

"Mr. Washington, commanding the rebel army, presuming upon the number and rank of the prisoners in his possession, has threatened retaliation in point of treatment to any prisoners of theirs in our power, and proposes an exchange, which is a circumstance I shall not answer in positive terms, nor shall I enter upon such a measure without the King's orders."

Before this letter reached England, the question had been decided. Treaties with the kinglings of Germany for mercenary troops having been signed, and numerous recruits having been enlisted at the various recruiting stations which the British government kept open in the German empire, and the time for the embarkation of the troops having come, Lord George wrote to General Howe :—

LORD GEORGE GERMAIN TO GENERAL HOWE.

"*February* 1, 1776.

"This letter will be entrusted to the care of the commander of His Majesty's ship Greyhound, who will also deliver up to you the officers of the privateer fitted out by the rebels, under a commission from Congress, and taken by one of Admiral Graves' squadron. The private men have all voluntarily entered themselves on board his Majesty's ships, but the officers having refused so to do, it has been judged fit to send them back to America, for the same obvious reasons that induced the sending back the rebel prisoners, taken in arms, upon the attack of Montreal, in September last.

"It is hoped that the possession of these prisoners will enable you to procure the release of such of his Majesty's officers and loyal subjects as are in the disgraceful situation of being prisoners to the rebels : for although it cannot be that you should enter into any treaty or agreement with rebels for a regular cartel for exchange of prisoners, yet I doubt not but your own discretion will suggest to you the means of effecting such exchange without the king's dignity and honor being committed, or His Majesty's name used in any negotiation for that purpose ; and I am the more strongly urged to point out to you the expediency of such a measure, on account of the possible difficulties which may otherwise

occur in the case of foreign troops serving in North America. I am, &c.

Howe's letter of the 19th of December, '75, was received by Lord George Germain on the 6th of February ; but it required no attention, for it had been fully answered by the letter of the 1st of February.

Meantime, the siege of Boston had been pressed, and Howe was driven out of New England. It was at Halifax that, on the 11th of May, he received the Secretary's letter, directing exchanges of prisoners to be made, and he took it with him to New-York harbor.

Soon after the arrival of Lord Howe, General Howe made an overture to Washington, by letter, on the subject of their respective treatment of prisoners ; the attempt at a correspondence failed from an error in form ; but on the 20th of July, Paterson, his Adjutant-General, formally announced that now Gen. Howe had authority to accede to a proposal of exchanging Governor Skene for Mr. Lovell. As much time had elapsed since the proposal was made, Washington reserved the subject for the decision of Congress.

"*July* 22, 1776.

"The Congress took into consideration the report of the committee respecting an exchange of prisoners: Whereupon,

"*Resolved*, That the commander-in-chief in each department be empowered to negotiate an exchange of prisoners in the following manner: One continental officer for one of the enemy of equal rank, either in the land or sea service, soldier for soldier, sailor for sailor, and one citizen for another citizen.

"That each State hath a right to make any exchange they think proper, for prisoners taken from them or by them."

"*July* 24, 1776.

"*Resolved*, That General Washington be empowered to agree to the exchange of Governor Skene for Mr. James Lovell."

Washington sent to Lieutenant-General Howe a letter, July 30, 1776, conforming to these votes ; and on the first of August

General Howe, addressing his letter to Washington, in his capacity as General, wrote as follows :—

GENERAL HOWE TO GENERAL WASHINGTON.

"*August* 1, 1776.

"Wishing sincerely to give relief to the distresses of all prisoners, I shall readily consent to the mode of exchange which you are pleased to propose, namely, 'Officers for officers of equal rank, soldier for soldier, citizen for citizen,' the choice to be made by the respective commanders for their own officers and men. You must be sensible that deserters cannot be included in this arrangement; and for the mode of exchange in the Naval line, I beg leave to refer you to the Admiral."

This is the way in which a system for the exchange of prisoners was established. During the progress of hostilities, various incidental discussions and interruptions took place, as for example : it was questioned whether stragglers were to be considered as prisoners of war ; whether exchanges should be immediate after captivity. When Lee was taken, Howe regarded him as a deserter ; and in this way exchanges were checked, till the government directed Lee to be treated as a prisoner of war. When the army of Burgoyne surrendered, a difficulty arose respecting the validity of the convention, unless it should be ratified by the authority of the king ; but essentially the rule of proceeding remained unchanged during the war of Independence, as established on the part of Britain by the letter of Lord George Germain, of February 1, 1776.

There is a point in that letter to which I wish particularly to call your attention. In the direction for effecting exchanges, no distinction whatever is made between captives taken on board privateers, and captives taken in battle or in garrison. It even happened, that the first opportunity for entering upon exchanges is stated by the Secretary himself to proceed from the possession of prisoners "taken from a privateer, fitted out by the rebels, under a commission from Congress." Our Government need not fear to be as forbearing as Lord George Germain and George the Third.

But on this subject of privateering, I beg leave to add one single suggestion. "Letters of marque," says Heffter, and there is no better authority, "are a legacy of the middle age and of its system of reprisals," and he regretted that the barbarous practice had not been renounced. By the famous declaration of the 16th of April, 1856, privateering was abolished for ever alike by Britain and by France, and so many powers gave their adhesion to the declaration, that to use the words of Heffter's French translator, "it can henceforward be regarded as the general law of Europe." This being the case, the right of continuing the system can belong only to those powers which were in possession of it when the declaration was made, and which have not acceded to the declaration. It does not follow that a new power coming into existence subsequent to that declaration has a right to resort to the system. The application of this view to our present unhappy domestic strife is obvious. Since the United States have forborne the use of privateers, the privateers of the insurgents ought not to have been admitted at all into the harbors of France or England, or other powers who were parties to the noble declaration of April, 1856.

I remain, my dear Mr. Bradish,

Ever yours, very truly,

GEORGE BANCROFT.

LUTHER BRADISH, LL.D.,

President of the New-York Historical Society.

MR. BANCROFT AND HIS BOSTON CRITICS.

[*From a Boston Newspaper, Feb.* 1862.]

"MR. BANCROFT, THE POLITICIAN.

"SINCE the outbreak of the rebellion little has been heard of Mr. Bancroft; but now that the tide has turned, and we seem to be approaching the end of our troubles, he appears again on the stage. On the 14th of this month of February he addressed to the President of the New York Historical Society a letter, of which we have read a printed copy, "On the Exchange of Prisoners during the American War of Independence." On the 19th of December, nearly two months earlier, the Massachusetts Historical Society had accepted a report on precisely the same subject, presented by a committee of which Mr. Sparks and Mr. Everett were members, but prepared, as was understood, by Mr. G. T. Curtis. The Massachusetts report, *which exhausted the subject, and is written with a statesmanlike ability and clearness,* was at once published both in a pamphlet form and in the newspapers, and was certainly known and noticed in New York soon after its date. Mr. Bancroft has added nothing to its statements or arguments of the slightest value; but he has not, in any way, recognized its existence. Such things are unusual. Perhaps Mr. Bancroft believes that he has acquired a right of eminent domain over all matters relating to the history of the United States, or that the Massachusetts Society has been poaching in his manorial preserves. But, however this may be, one point is worthy of notice. The Government of the United States, some weeks before the date of Mr. Bancroft's letter, had instituted exchanges with the so-called Confederate States, and, as everybody knows, is still

carrying on such exchanges, taking for the basis of its proceedings the principles so well laid down and so clearly proved and worked out to their consequences in the Massachusetts report, which was prepared for this especial purpose, and which, immediately after it was printed, was laid before the chief person in the Administration. The same is true of Mr. Bancroft's suggestion at the end of his pamphlet, that captured privateersmen should be put on the footing of prisoners of war. The Government had done it some time before he vouchsafed the advice; and the principles on which it could be done were drawn from the precedents exhibited in the report of the Massachusetts Historical Society."

The foregoing is a specimen of what a certain sort of men in Boston, as elsewhere, can be guilty of in the way of personal malevolence. We are better able to estimate what Mr. Bancroft has done than that which (the writer intimates) he has failed to do; but of one thing we are certain, and the evidence is on the record—Mr. Bancroft's loyalty and entire devotion to the cause of the Union. If he has omitted some of the noisier demonstrations of patriotism, which seem popular with such writers as his critic in Boston, we feel confident that men of intelligence will not fail to recognize his influence in affairs during this time of trial.

The article above, however, is so gross a misrepresentation as to demand a correction. We cannot be suspected of being deficient in respect for the "Massachusetts Historical Society," or the distinguished gentlemen who signed the report of the 19th December, on the "Exchange of Prisoners," &c., when we deny, as we do most decidedly, that it "exhausted the subject." None of its signers would claim that for their work. While we have no disposition to challenge the statement that it was "written with statesmanlike ability and clearness," we decidedly maintain that it did not exhaust the subject. The evidence of this fact is in the report itself. The writer says—we quote the report:

"We have seen that Sir William Howe, in December, 1775, when in command at Boston, did not feel himself authorized to make an ex-

change of prisoners without the King's express orders. We shall see, however, presently, that in January, 1777, he had for some time, to use his own language, some 'agreement with the enemy for exchange of prisoners.' What was this agreement? and on what authority did he make it?"

Neither of these questions is answered in the report, although they are obviously the most important points in the whole subject. The nearest approach to an answer in the report is as follows:

"It is not to be supposed that Sir William Howe *assumed* an authority in 1776 which he did not consider that he possessed in 1775, or that he acted without the King's permission . . . although we cannot trace in any of his published correspondence with General Washington any reference to a new authority on the subject of exchanging prisoners, there can be no rational doubt that he had received such authority, and that a search in the London War Office would disclose it."

Now, with all deference to the distinguished writer of this report, we submit that this must be a slip of the pen—the London War Office is not the place to look for such material. This is, however, of no present importance.

Mr. Bancroft knew where to look for the rule and its history, and he has given what the report did not give in that respect, and in our judgment, has added a valuable contribution to the history of the subject. And we regard the point taken by Mr. Bancroft, respecting the privateers, as being quite as interesting and important as any of the points made in the report. As to the influence of any or all of them with the National Government, we do not ascribe any great importance to it; but we may add our private opinion that the well-known and widely-circulated letter of Judge Charles P. Daly has been quite as serviceable to the Government as any of them in this connection.

As to Mr. Bancroft's omission to refer to the report of the Massachusetts Society, he had no occasion to notice it. We happen to know that Mr. Bancroft wrote the letter at the request of a person interested in the subject, who knew that the

Massachusetts Committee had failed to present the main points which are presented in Mr. Bancroft's letter, and the only reference he could have made must have been to its deficiencies in that respect. There is nothing, then, to justify this malevolent attack on the distinguished historian in the character of his letter to the New York Historical Society, and the secret of it must be found in some personal or political spite, outside the limits of legitimate historical discussion.

New York, *February*, 1862.

P. S.—The publication of the proceedings of the Massachusetts Historical Society, 1860–2, enables us to add a confirmation of the main point in the foregoing article. At pages 346* and 347*, the writer of the report to the Massachusetts Society adds a note to the report itself, in which he gives the extracts from Lord George Germain's despatch, *first presented* in Mr. Bancroft's letter—the existence of which he was not aware of when he prepared the report. He acknowledges his obligations for a copy of "the despatch" to Mr. Sparks, who obtained it in England, but at the same time states that it had not been printed when he wrote the report. This is a mistake. The whole letter may be found in the "Howe Correspondence," in the Parliamentary Register, published by Almon in 1779, Vol. XI., pp. 318–319—an authority sufficiently familiar to most of our historical students, and which must be well known to many, if not all, the members of the Massachusetts Historical Society. It may probably be found in their library, as in most libraries of American history, being not rare, although an exceedingly valuable work.

New York, *May*, 1862.

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